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IN THE

Supreme Court of the United States

October Term, 1966
No. 669

ASSOCIATION OF INDUSTRIAL ELECTRICIANS, a California Corporation,

Appellant and Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

ALEXANDER H. SCHULLMAN,
Suite 2120 Travelers Bldg.,
3600 Wilshire Boulevard,
Los Angeles, Calif. 90005,
Attorney for Petitioner and Appellant.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Petitioner herein, and Appellant, prays that a Writ of Certiorari issue to review the Order of the United States Court of Appeals for the Ninth Circuit filed on June 8, 1966, at No. 20934 wherein said Honorable Court dismissed the Petition for Review filed by Petitioner herein pursuant to Respondent's Motion for the dismissal of said Petition for lack of jurisdiction.

Petitioner respectfully requests that the Petition for Review on this Writ of Certiorari be granted on the following bases:

a. That there is substantial evidence on the record as a whole which supports the Petitioner with respect

to the fact that the Petitioner was and is an appropriate bargaining unit, within the meaning of the Act, and such evidence in detail is within the possession of the National Labor Relations Board, 21st Region, Los Angeles, California, and that such evidence requires that a hearing be held and ordered by this Honorable Court with respect to the Petition filed by the Petitioner for an election.

b. That the action of the National Labor Relations Board, 21st Region, in dismissing the Petition and the action of the National Labor Relations Board dismissing the Petition for Review in affirming the 21st Region, and the Order of the United States Court of Appeals for the Ninth Circuit filed June 8, 1966, and received by Petitioner June 13, 1966, violates directly the ultimate fiat as provided for in the Labor-Management Relations Act 1947, as amended, and particularly Sections 9(a) and 9(b)(2) thereof, and subverts the purposes and policies of said Act. By denying jurisdiction in the United States Court of Appeals for the Ninth Circuit and by denying a hearing on the Petition for an Election filed by the Petitioner there has been a denial of due process in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

c. That the Order of the National Labor Relations Board denying the Appeal, to wit, by Petitioner, from the Dismissal of the Petition for an Election by the 21st Region of the National Labor Relations Board, constitutes a final and appealable Order, conferring jurisdiction on the United States Court of Appeals for the Ninth Circuit for the consideration and determination of the Petition for Review filed, and said Court's

Order dismissing said Petition for an Election for lack of jurisdiction violates Labor-Management Relations Act 1947, as amended, and particularly Sections 9(a), 9(b)(2), 9(d) and 10(f).

d. That the Order of the United States Court of Appeals for the Ninth Circuit dismissing Petitioner's Petition for Review under date of June 13, 1966, deprives Petitioner of representation and proper collective bargaining under said Labor-Management Relations Act 1947, as amended, and requires the granting of the Writ of Certiorari herein to said United States Court of Appeals for the Ninth Circuit, so that the decisions of this Honorable Court may be made compatible, legally, on these matters, with the numerous decisions on civil rights, the congressional legislation and interpretation thereon by this Honorable Court with respect to certain individual rights, with the view to seek and secure uniformity on the right of review, of which Petitioner has been deprived.

e. That the United States Court of Appeals for the Ninth Circuit by its Order dismissing Petitioner's Petition for Review has decided a Federal question of substance which actually has not theretofore been determined by this Honorable Court in that, while there has been a series of decisions by this Honorable Court, which have held that the action of the National Labor Relations Board in affirming the dismissal of a Petition for Election is not a "final order of the Board", reviewable under Section 10(f) of the National Labor Relations Act, but rather a decision of the Board in a representation proceeding, it is implicit that in *this case* under the facts, the action of the Board was and is a final order and reviewable both by the United States

Court of Appeals for the Ninth Circuit and by this Honorable Court. The facts presented to the 21st Region of the National Labor Relations Board presented substantial evidence on the entire record requiring a hearing and an election. The dismissal of the Petition by the 21st Region, its affirmance by the National Labor Relations Board and the dismissal for want of jurisdiction by the United States Court of Appeals for the Ninth Circuit represent basic denials of due process.

Predicated on the above bases, we earnestly request that this Petition be granted.

I.

Reference to Official Report of Opinion Below.

The Petitioner herein filed with the United States Court of Appeals for the Ninth Circuit at No. 20934 its Petition for Review of Decision and Order of the National Labor Relations Board, its designation of portions of the record to be reproduced or filed with said United States Court of Appeals for the Ninth Circuit by both the National Labor Relations Board and the 21st Region thereof, and its Answer to Motion of the National Labor Relations Board to dismiss the Petition for Review and asserting jurisdiction of the United States Court of Appeals for the Ninth Circuit. In addition, Petitioner filed its Statement of Points Relied Upon.

On or about May 11, 1966, the National Labor Relations Board filed its Motion to Dismiss the Petition for Review and on June 13, 1966, at said No. 20934, the United States Court of Appeals for the Ninth Circuit filed its Order, wherein said Honorable Court ordered. "IT IS HEREBY ORDERED that Respondent's Mo-

tion for the Dismissal of said Petition for lack of jurisdiction be, and the same is, hereby granted".

A copy of said Order of the United States Court of Appeals for the Ninth Circuit appears in full in the Appendix hereat at page 1 thereof.

II.

Statement as to Jurisdiction.

The action undertaken by Petitioner herein is pursuant to the Labor-Management Relations Act 1947, as amended (29 U.S.C.A., Sec. 185(a)), which authorizes such actions.

The impact of this section permits the individuals organized into the corporate entity of the Association of Industrial Electricians, as their bargaining representative to utilize the Act so as to secure collective bargaining rights and contractual conditions compatible with their particular skill, which is not recognized and has not been recognized in all collective bargaining heretofore engaged in by the present collective bargaining agent.

Accordingly, jurisdiction is imminent in this case.

In addition, jurisdiction is within the purvew of the Fifth and Fourteenth Amendments to the Constitution of the United States since the denial of a hearing and denial of election is the equivalent of taking property, that is Petitioner's right to wages, hours and working conditions compatible with their particular skill without a hearing.

Further, jurisdiction in invoked since this is an appeal in the form of a Petition for Writ of Certiorari from a Final Order of the National Labor Relations

Board, which is under the impact of the respective Labor-Management Relations Act 1947, as amended, and the Labor-Management Report Disclosure Act of 1949, as amended.

In particular, jurisdiction is invoked under Sections 8(d), 9(a), 9(b)(2), 9(d) and 10(f) of the Labor-Management Relations Act 1947, as amended. It appears clear, therefore, that this Honorable Court does have jurisdiction with respect to this Petition and in this matter.

III.

Questions Presented for Review.

1. Did the 21st Region of the National Labor Relations Board abuse its discretion in dismissing the Petition for Election filed by Petitioner herein; did the National Labor Relations Board abuse its discretion in affirming the dismissal of said Petition for an Election by its 21st Region; did the United States Court of Appeals for the Ninth Circuit violate due process in accordance with the Fifth and Fourteenth Amendments to the Constitution of the United States in dismissing the Petition for Review of the Decision and Order of the National Labor Relations Board for lack of jurisdiction.

2. Did the United States Court of Appeals for the Ninth Circuit have jurisdiction to entertain and determine the Petition for Review filed by Petitioner.

3. Was the Order of the National Labor Relations Board dismissing the Petition for an Election, without a hearing, a final order of said Board.

4. Was there substantial evidence on the record as a whole, which supports the Petitioner with respect to the

fact that the Petitioner was and is an appropriate bargaining unit, within the meaning of the Labor-Management Relations Act 1947, as amended; and is such evidence in detail within the possession of the National Labor Relations Board, 21st Region at Los Angeles, California; and does that evidence require a hearing to be held and ordered with respect to the Petition filed by the Petitioner for an Election; and if this last query must be answered in the affirmative, does not the denial of a hearing and the Order of the National Labor Relations Board and the Order of the United States Court of Appeals for the Ninth Circuit constitute denials of due process to Petitioner herein.

IV.

Statement of the Case.

A. On or about December 17, 1965, the Petitioner herein filed the Petition for Election, under Section 9 (c) of the National Labor Relations Act, at Lever Bros. Company for the eleven (11) maintenance and production electricians employed in the Los Angeles area, as an appropriate, homogeneous craft unit. More than sufficient representation cards were filed with the 21st Region; the unit described related to all maintenance and production electricians at the Los Angeles plant at Lever Bros., with the customary exclusions of the Act, and the exclusions of all other industrial employees. In fact, all eleven (11) electricians at the Lever Bros., plant signed representation cards, designating the Petitioner as their bargaining representative, which cards were filed with the 21st Region.

B. By letter and decision, dated January 24, 1966. signed by the Regional Director, Mr. Ralph E. Kennedy,

the petition for an investigation and certification of representation under Section 9 (c) of the Act was dismissed.

C. By telegram, the National Labor Relations Board extended time for appeal in behalf of Petitioner to February 14, 1966, and prior to said February 14, 1966, there was filed with the National Labor Relations Board in Washington, D.C., at 21-RC-9888 a Request for Review detailing the factual and legal position of Petitioner herein. During the month of March, 1966, as indicated above by letter and decision, the National Labor Relations Board affirmed the 21st Region, in dismissing the Petition for Election filed by Petitioner herein.

D. As of June 8, 1966, at No. 20934, by its Order, the United States Court of Appeals for the Ninth Circuit dismissed the Petition for Review of Decision and Order of the National Labor Relations Board for lack of jurisdiction. (Appx. p. 1.)

V.

Statement of Fact.

The Association of Industrial Electricians has secured signatures to eleven (11) cards for representation by the Association of Industrial Electricians, Petitioner herein, for the purpose of collective bargaining for all maintenance and construction electricians employed at Lever Bros. Plant, 6300 Sheila Street, Los Angeles, California.

On December 17, 1965, the Association of Industrial Electricians filed a petition for election, under Section 9(c) under the National Labor Relations Act, at Lever Bros. for the eleven maintenance and production elec-

tricians employed in the Los Angeles area, as an appropriate, homogeneous craft unit. More than sufficient representation cards were filed with the Twenty-First Region; the unit described related to all maintenance and production electricians at the Los Angeles Plant of Lever Bros., with the customary exclusions of the Act, and the exclusions of all other industrial employees.

Thereafter, intervention was filed on behalf of Local 452, International Chemical Workers Union and intention to intervene was filed by the International Brotherhood of Electrical Workers, but the latter never filed its interest, manifested by representation cards, since before the IBEW had a chance to complete its interest, the petition filed herein was dismissed on January 24, 1966.

Specifically, the petition requests an election, since the eleven electricians employed at Lever Bros. constitute a homogeneous and appropriate craft unit and included all of the employees in that unit, to wit, all the electricians at the Los Angeles Plant of Lever Bros.

All of such employees have a distinct, individual and integrated common interest and which interest has been defeated by contract, resulting, as it has in a history of collective bargaining which has been, and is deleterious, discriminatory, intentionally or otherwise, and which contravenes the collective bargaining purposes of the Labor Management Relations Act of 1947, as amended, and of the Labor Management Reporting and Disclosure Act of 1959, as amended.

Case history upon case history, as a result of numerous grievances, not only in the plant at Los Angeles but throughout the combine, including the other three areas whereat Lever Bros. Co. has plants, reveal,

startlingly, the indigeneous necessity of an election in this matter and a hearing thereon, so that all the evidence which is considerable, may be adduced by petitioner herein.

Such testimony, petitioner feels will support factually and legally, the necessity for an election.

An investigation and a dismissal of the petition frustrates the very purposes of the Act, in relation to this matter.

There is presently a Master Labor Agreement between the Lever Bros. Co. and the International Chemical Workers Union covering Edgewater, Baltimore, Los Angeles and St. Louis.

This Master Agreement became effective March 14, 1965, and continued in full force through March 13, 1966, and was renewed.

It was conceded by the Twenty-First Region that the contract was not a bar to an election, and it has been admitted to counsel that the petitioning union is an appropriate craft unit.

Because of the detailed material and evidence that is involved to establish the necessity and requirement for an election, a hearing thereon must be held.

The necessity for a hearing on the election and for an election appears cogent. Therefore this writ should be granted since:

A. It is conceded that the eleven electricians constitute a separate, qualified, integrated group and an appropriate collective bargaining union.

B. At the Plant in Los Angeles of Lever Bros., with respect to these eleven electricians, there is an undisputed homogeneity; they perform, exclusively, electri-

cal work; they are not interchanged in the Los Angeles plant with other employees, or do any other craft or industrial work; either by way of maintenance or production; they certainly are not interchanged with any other craft, production or maintenance employees, or do any other craft or industrial work, either by way of maintenance or production; they certainly are not interchanged with any other craft, production or maintenance employees or *even* electricians of any of the other plants of Lever Bros. in Edgewater, Baltimore or St. Louis.

C. There is a complete common interest of these employees. Whether accidentally or otherwise, the entire history of collective bargaining between Lever Bros. and the present bargaining agent has resulted in an unrealistic, discriminatory and unsatisfactory contract covering these eleven electricians; there is no *seniority* with respect to any other plant; there is no interdepartmental seniority at the Los Angeles plaint, seniority being specifically limited within the department covering maintenance and construction electricians, and even then, on a step by step basis based upon a figment of qualification, and not through seniority.

D. The wage structure, historically, and presently is not only unrealistic, and not based upon any standards of criteria that are reasonable, but is completely out of line with prevailing wages for similar industries, within the same area generally, and covering the same classifications.

E. All of the collective bargaining agreements, including the 1965 and 1966 agreements show no recognition of the skill, training, background or ability of the eleven electricians as evidenced in the wage scale in all

the Master Agreements, including the present 1965 and 1966 agreements; showing a calculated disregard for years of training, skill, background and requirements for a master electrician.

F. The control and operation of management is distinctive and integrated only with respect to the operation of the maintenance and construction electricians involved herein, in that the immediate superintendent or supervisor is an electrician, and all of the work performed by the eleven individuals herein is exclusively related to electrical work covering maintenance and production, and *no other*.

G. The skill of electricians, the type of work and interchange amongst eleven alone, and with *no other employees* at Lever Bros., and performance of *no other work* either industrial or of any other craft clearly indicate the necessity for an election.

Each and every requirement, each and every formula, each and all criteria, and each and all of the pronunciamentoes, both of the Board and of the decisions are met and fully equated for the purpose of an appropriate craft union and for a hearing and election.

The basis for the dismissal by the Twenty-First Region of the petitioner's petition herein, and by the Board as evidenced by the letter of January 24, 1966, is predicated on "a substantial history of collective bargaining on a multi-plant basis—", and two cases are cited in support thereof, *General Motor Corporation*, 120 N.L.R.B. 1215 and *Lever-Bros., Inc.*, 97 N.L.R.B. 1240.

As we shall briefly point out below, neither case is appropriate or applicable to the facts herein.

What is important is that neither the Twenty-First Region nor the Board nor the United States Court of Appeals for the Ninth Circuit can possibly cloture the right of the eleven electricians to be self represented in an appropriate unit manifested by their own group and by the petitioner herein, certainly without permitting the taking of detailed testimony, both oral and documentary.

The contention that the union herein, while deemed to be appropriate, is inappropriate because it is limited in scope, would destroy and subvert the purposes of the Act with respect to original or initial organization amongst employees, whether craft or industrial.

It is not the purpose of this petition to go into the question of whether industrial or craft organization is preferable; or whether plant or multi-plant negotiations or even industry wide negotiations are preferable; the purpose is, under the facts and law, to recognize pragmatically the inherent right of these eleven electricians to organize themselves and to bargain as a union and to receive the protection of the Act and not be administratively "denigrated"—professionally, or as a craft, without due process of a complete and thorough hearing.

Some of the Factual Data That "Cries" Out for a Hearing on the Petition for an Election, as Requested by Petitioner Herein.

A. There was attached in the presentation to the Board, a questionnaire filled in by each of the eleven electricians, which eloquently sets forth the disparities in the entire structure of the Master Agreement, the necessity for an election and a separate craft union in

the Los Angeles plant alone. [Ex. "A", Petition for Review by the N.L.R.B.]

An analysis of Exhibit "A" sets forth the job description of an electrician, the history of the eleven individuals, the fact that there is no interchange of employment in any of the other plants included in the Master Agreement, or any interchange with other crafts or industrial employees in the Los Angeles plant.

B. There was attached in the same presentation to the Board, a six page analysis which we believe illuminating, and requires a hearing on the petition for election, and the reversal of the dismissal of the petition for election in this case. [Ex. "B" Petition for Review by the N.L.R.B.]

Page 1 shows the disparity in remuneration irrespective of training, skill or unskill. Page 2 shows the gradaal increase of scale for the average job as overtaking the skilled crafts, with no incentive to advance or improve through training and education. Page 3 reveals the patent fault, the kind that geologically may cause earthquakes, which in human relations and work may cause ruptures. Re-evaluations by the union committees are open and available to the union committee and other unskilled employees on a "bid and bump basis." The electricians at the Los Angeles Plant have no job re-evaluation. Page 4 reflects that the Lever combine is a combine in name only. Page 5 reflects that many unskilled jobs pay more than the skilled jobs. Page 6 shows the requirements for an electrician—four years experience, two years experience on industrial plant electrical maintenance, qualification on craft tests and physicial ability to perform work assignments.

The prevailing wage scale in the Los Angeles area for those similarly employed as maintenance and production electricians, as evaluated on the basis of fifteen similarly engaged industries, with similar craft classifications, is $4.00 an hour. This is evinced in the present wage scale of Procter and Gamble Mfg. Co. and the IBEW, in the Los Angeles contract, and represents a recognition of proper bargaining with craft, skill, background, experience and work performance. This is in contrast with the history of bargaining in the instant matter, as reflected in the low wage scale, lack of seniority, lack of job re-evaluation and other detriments reflected in the exhibits. [Exs. A and B of Petition for Review filed with the Board.]

VI.

Summary of Issues Involved.

1. Does the United States Court of Appeals for the Ninth Circuit have jurisdiction to entertain and consider the Petition for Review filed in this matter with said Court.

2. Did the dismissal of the Petition for Review by said United States Court of Appeals for the Ninth Circuit (Appx. p. 1) constitute a denial of due process and in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

3. Was the Order of the National Labor Relations Board affirming the dismissal of the Petition for an Election a final order subject to review by the Federal Courts.

4. Was jurisdiction implicit so that, assuming the facts and evidence were substantive and substantial on

the record as a whole, the dismissal of the Petition for an Election, administratively and the dismissal of the Petition for Review by the United States Court of Appeals for the Ninth Circuit represent violations of due process under the Fifth and Fourteenth Amendments to the Constituion, in violation of the Labor-Management Relations Act 1947, as amended, and particularly of Sections 8(d), 9(a), 9(b)(2), 9(d) and 10(f).

5. Was the evidence in the possession of the 21st Region of the National Labor Relations Board substantial on the record as a whole, so that its denial of the Petition for an Election constituted a constitutional abuse of discretion and requires the granting of this Petition for Writ of Certiorari, so that the Board may order a hearing on this matter.

VII.

Argument.

Because the issues of law involved are interrelated, the argument thereon is equally applicable in support of the position of the Petitioner with respect to each and every issue enumerated in the Summary of Issues Involved.

Accordingly, Petitioner in support of its request for the granting of this Petition for Writ of Certiorari asserts that this Honorable Court does have jurisdiction in this matter and that the Order of the United States Court of Appeals for the Ninth Circuit should be reversed and the National Labor Relations Board ordered to grant a hearing on the Petition for an Election. In support thereof, Petitioner alleges:

1. That it is true on April 29, 1966, Petitioner filed with the United States Court of Appeals for the Ninth

Circuit, a Petition to Review "the Decision and Order of the National Labor Relations Board . . . ordering the dismissal of the petition heretofore filed for an election by petitioner, and affirming the Decision of Region 21 of the National Labor Relations Board, that the petition for an election filed in Case No. 21-RC-9888, by petitioner herein should be, and was dismissed". (Pet. pp. 1-2.)

However, the Administrative Agency of the National Labor Relations Board prior to resort to said Court was and is the last tribunal in that it determined with finality the Petition for an Election by petitioning union, and thereby its decision became a final order.

2. The Petition for Review filed with the United States Court of Appeals for the Ninth Circuit requested review of the Decision and Order of the National Labor Relations Board entered on or about the month of March 1966, and sets forth in the remaining portion of said Petition for Review the factual and legal reasons for such review.

The Labor Management Relations Act 1947, as amended, provides in Section 9(d) and in the headnote published in the various legal media, "Judicial Review of Representation Proceedings."

While it is true that Section 9(d) of the Act then proceeds to discuss and provide for a Petition for Review following an investigation pursuant to subsection (c) of Section 9, and based upon an unfair labor practice, it is evident that to cloture appeal to this Court would be depriving petitioning union and other litigants of the same rights that the Administrative Agency, which N.L.R.B. does have, and to this extent

would create a dichotomy and therefore be unconstitutional.

3. Under Section 9(b)(2), there is provided that the Board shall not "decide that any craft unit is inappropriate for such purposes on a ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation."

4. It is true that the plethora of cases cited by the Board categorically hold that a decision of the Board in a representation proceeding is not reviewable.

May we attempt to controvert these decisions since no group seeking representation, even though appropriate, could ever have the final decision of the Board reviewed, unless it was integrated with an unfair labor practice case, and in the latter event the Court of Appeals would entertain their view of the unfair labor practice case, arising out of representation proceedings, but would deny jurisdiction in the Petition for Review of the final order of the Board in the representation proceedings.

May we submit that this was never the intent of Congress and that it is not necessary to go to Congress for relief.

5. As an exemplar without going through each case cited by the Board let us advert to two cases:

a. *American Federation of Labor, et al. v. National Labor Relations Board* (1939), 308 U.S. 401.

In the *American Federation of Labor* case at page 305 the Court stated:

> "An argument, much pressed upon us, is, in effect, that Congress was mistaken in its judgment

that the hearing before the Board in proceedings under § 9 (c), with review only when an order is made under §10 (c) directing the employer to do something 'provides an appropriate safeguard and opportunity to be heard', House Rep. p. 23, and that 'this provides a complete guarantee against arbitrary action by the Board,' Sen. Rep., p. 14. It seems to be thought that this failure to provide for a court review is productive of peculiar hardships, which were perhaps not foreseen in cases where the interests of rival unions are affected.[4] But these are arguments to be addressed to Congress and not the courts. The argument too that Congress has infringed due process by withholding from federal appellate courts a jurisdiction which they never possessed is similarly without force. Shannahan v. United States; 303 U.S. 596, 58 S. Ct. 732, 82 L. Ed. 1039; see In re National Labor Relations Board, 304 U.S. 486, 495, 58 S. Ct. 1001, 1005, 82 L. Ed. 1482.

Footnote 4.

"Congress apparently recognized that representation proceedings under § 9 (c) might involve rival unions. The House Committee said: 'Section 9 (c) makes provisions for elections to be conducted by the Board or its agents or agencies to ascertain the representatives of employees. The question will ordinarily arise as between two or more bona fide organizations competing to represent the employees, but the authority granted here is broad enough to take in the not infrequent case where only one such organized group is pressing for recognition, and its claim of representation is challenged.' H. Rep. No. 1147, Committee on Labor, 74th Cong., 1st Sess. p. 22."

This case presaged other United States Supreme Court and other court Decisions of similar vein, including the *Hendrix* case. All fail to recognize the inherent right of review in a representation proceedings under 9(c) of the Act, since representation *is* the *Magna Carta* of the Act. We sincerely believe this Honorable Court should renew all facets of this issue, in light of its own contemporary civil right and other landmark decisions affecting individual and minority rights.

b. Similarly, in the case of *Hendrix Mfg. Co. v. NLRB*, 321 F. 2d 100, 106, the Fifth Circuit while recognizing the unfair labor practices involved, opined:

> "And jurisdiction does not come into being because the representation order arises out of a consolidated hearing as to which the Court of Appeals has jurisdiction to review the order concerning unfair labor practices."

6. We are now met with the intent of Congress when in fact there is a contention as indicated in the Petition for Review filed with the United States Court of Appeals in the Ninth Circuit, by petitioning union that there has been an express violation of the Labor Management Relations Act 1947, as amended, Section 9, subdivision (b) and subparagraph (2) thereof, which frustrates the rights of individuals, as recognized in the Labor Management Reporting and the Disclosure Act of 1959, as amended, and destroys the efficacy of groups and individuals who freely desire to collectively bargain within the purview of such Acts but are then denied recourse in the form of a Petition to Review by the Federal Courts and ultimately by the United States Supreme Court.

May we request that this matter be reviewed in full consideration of all the rights and remedies implicit in all the labor laws and in Federal Legislation that there cannot be a "right" without a remedy.

The decisions support the position of Petitioner herein:

The case of *General Motors Corporation,* 129 N.L.R.B. 1215 is actually inapplicable to the instant matter. In its decision at page 1218, the Board stated,

> "From the inception of their union activities, the UAW has been the principal and the almost exclusive organizational force among the employees of the GM company. Starting in 1938 it won successive single plant elections in the approximately 120 plants and was certified by this Board as exclusive representative in each plant as a separate bargaining unit. From the very beginning, however, and apparently as soon as there came into being more than one such certification, UAW and GM have engaged in single, common, centralized bargaining negotiations for all the plants where the employees had chosen UAW as their bargaining agent. From such bargaining negotiations there emerged in each instance a single contract, nationwide and companywide in scope, and fixing conditions of employment for employees in all these plants. The terms of the successive national agreements, as evidenced by the current contract placed in evidence, establish in detail such matters as seniority rights, hours of work, call-in pay, over-time obligations, wages (including the annual improvement factor schedule of pay increases and the cost of living BLS pay increase schedule), vacations and

absences, strike and lockout limitations, skilled trades training and privileges, holiday pay, a pension plan, insurance benefits, and an unemployment benefit plan."

This is not, and never has been the situation with respect to Lever Bros.

In the case of *Lever Bros., Inc.*, 97 N.L.R.B. 1240 (1952), the Board while recognizing the multi-plant history of bargaining, has also recognized that from 1940 to 1946 the employees in Cambridge were a separate unit. In fact in 1947 the case of *Lever Bros. Co.*, 74 N.L.R.B. 628, a separate election was ordered at Hammond, Indiana, covering two crafts, the contending union being "United" and the International Chemical Workers, on a multi-plant basis.

The 1952 decision in *Lever Bros.* does not represent precedent for the dismissal of the instant petition.

This is true for the following reasons:

A. In the case of *North American Aviation, Inc.*, 113 N.L.R.B. 1049 (1955) the Board held that severance of otherwise appropriate craft departmental groups on less than an employer wide basis is not precluded by multi-plant coverage of aircraft company's employers under contract. It is true that in this case, the employer's three plants were many miles apart and the employees in question were represented separately for some years.

The employees at Lever Bros. at some of its plants were represented separately for some years.

In *N.L.R.B. v. Moss Amber Mfg. Co.* (C. A. 4, 1959) the Court held, that determination of the Board that cutters and spreaders of one of two plants of employer constitute an appropriate bargaining unit, *is supported by substantial evidence of geographical separation of the plants, lack of employee inter-change and the bargaining history.*

In the *Moss Amber* case the Board was not controlled by the extent of the organization; in our case all the employees are members of the petitioning union.

Further, the exhibits in this case establish that the bargaining history is sufficient for recognition of the instant union and a reversal of the Twenty-First Region's dismissal of the instant petition, and of the Order of the Ninth Circuit.

In a definitive case covering the exact subject matter in *American Cyanamid Co.* (1954), 110 N.L.R.B. 89, the Board recognized that severance of craft units from a production and maintenance group and refused to dismiss the petition. The Board held that the petitioner's purpose is to establish itself as representative of maintenance employees and *since petitioner has never represented employees,* therefore, petitioner is not attempting to use the Boards craft severance doctrine to "re-establish itself as representative of a production and maintenance unit, which it formerly represented".

Berger Bros. Co., 116 N.L.R.B. 439 (1956).

In the above cases, the Board held separate elections for machinists, instrument mechanics, scale mechanics and millwrights.

In *International Harvestor Co.* 111 N.L.R.B. 606 (1955), *it was held for the purpose of craft severance a union which is newly organized for sole and exclusive purposes of representating members of a particular craft* lmeets the test of "traditional" representation as re*quired in the American Potash Chemical Co. case, 107 N.L.R.B. 1418.*

J. I. Case Co., 112 N.L.R.B. 796 (1955).

In *Colgate-Palmolive Co.,* 120 N.L.R.B. 1567 (1958), the Board held the union formed to represent carpenter millwrights at employer's plant intends to confine itself to that craft and is an appropriate unit.

In *N.L.R.B. v. Libbey-Owens Ford Glass Co.* (C. A. 4 1957), 241 F. 2d 831 the Circuit Court held that determination of the Board that a craft unit of electricians and instrument electricians is appropriate and reasonable, notwithstanding a prior plant-wide unit, where the Board found that electricians and instrument electricians were skilled craftsman entitled to protection under Section 9(b) of LMRA. In the present situation we have a new Union that meets the Potash requirements, and is therefore equated with the requirement of history of collective bargaining.

Innumerable cases are collated in *L. R. Cumulative Digest,* Section 64.514 (too numerous to mention here) which support the position that electricians may constitute a separate bargaining unit, or may be included in industrial units.

VIII.

Conclusion.

From the foregoing facts and law, and based upon the entire record, it is urged that the Petition for Writ of Certiorari should be granted and that the Order of the United States Court of Appeals for the Ninth Circuit should be reversed and the National Labor Relations Board should be ordered to grant a hearing to Petitioner so that, at said hearing, as Petitioner sincerely believes, there will be adduced substantial and sufficient facts to require an election.

September 10, 1966

Respectfully submitted,

ALEXANDER H. SCHULLMAN,
Attorney for Petitioner and Appellant.

APPENDIX.

Order.

In the United States Court of Appeals for the Ninth Circuit.

Association of Industrial Electricians, a California Corporation, Petitioner, v. National Labor Relations Board, Respondent. No. 20934.

Filed June 8, 1966.

On Petition for Review of Decision and Order of The National Labor Relations Board.

Before: Hamlin, Merrill and Duniway, Circuit Judges.

The motion of the National Labor Relations Board, respondent herein, to dismiss the petition for review heretofore filed by petitioner herein, coming on regularly for hearing this third day of June, 1966, and the matter having been argued before this court by counsel for the respective parties,

It is hereby ordered that respondent's motion for the dismissal of said petition for lack of jurisdiction be, and the same is hereby, granted.

Dated: June 3, 1966.

Oliver D. Hamlin
Charles M. Merriel
Ben C. Dunniway
Circuit Judges.

Verification.

State of California, County of Los Angeles—ss.

I, the undersigned, being duly sworn, according to law, depose and say:

I am an officer and member of the Petitioner and Appellant in the above-entitled action; I have read the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and brief in support there of and know the contents thereof; and the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

Dated: September 10, 1966

JEREMIAH DONOVAN

Subscribed and sworn to before me this 10th day of September, 1966.

MARIE C. RYER

Notary Public in and for said County of Los Angeles, State of California

My Commission expires July 5, 1968.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 669

ASSOCIATION OF INDUSTRIAL ELECTRICIANS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

We respectfully invite the attention of the Court to the following facts which show that the petition was filed out of time:

The order of the court of appeals (Pet. App., p. 1) was filed on June 8, 1966.[1] The petition for a writ

[1] This order, dismissing for want of jurisdiction petitioner's petition for review, is a "judgment" within the meaning of 28 U.S.C. 2101(c). Cf. *National Labor Relations Board* v. *Mac-*

of certiorari was filed on October 13, 1966, one hundred and twenty-seven days after "entry" of the order.[2] No extension of the time for filing the petition was applied for or granted. Since the ninety-day limitation for filing a petition for a writ of certiorari imposed by 28 U.S.C. 2101(c) is jurisdictional, the petition is untimely and therefore should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
National Labor Relations Board.

OCTOBER 1966

Kay Radio & Telegraph Co., 304 U.S. 333, 343-344, reversing 87 F. 2d 611 (C.A. 9). Similarly, filing is synonomous with "entry" of the order. See Rule 22 of the Rules of the United States Court of Appeals for the Ninth Circuit, reprinted in 28 U.S.C.A.

[2] Petionier previously had attempted to file its petition on September 13, 1966—ninety-seven days after the entry of the order—but the Clerk's office did not accept it for filing.

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